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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 31st day of August, Two thousand and six.

PRESENT:

HON. BARRINGTON D. PARKER,
HON. RICHARD C. WESLEY,
HON. PETER W. HALL,
Circuit Judges.

Marvin Rosenblatt,

_____*Plaintiff-Appellant,*

-v.-

No. 05-6173-cv

Christie, Manson & Woods Ltd.,

Defendant-Appellee

For Plaintiff-Appellant: J. Douglas Richards, Milberg Weiss Bershad & Schulman LLP,
New York, New York.

For Defendant-Appellee: Michael E. Salzman, Hughes Hubbard & Reed LLP, New York,
New York.

1 ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND
2 DECREED that the judgment of the United States District Court for the Southern District of New
3 York (P. Kevin Castel, *J.*) be, and it hereby is, AFFIRMED.

4 Marvin Rosenblatt appeals from a grant of summary judgment to defendant on his breach
5 of contract, breach of the duty of good faith and fair dealing, and related claims. Familiarity with
6 the facts, procedural history and issues on appeal is assumed.

7 This Court reviews a grant of summary judgment *de novo*, determining whether the
8 district court correctly concluded that there are no genuine issues of material fact and the moving
9 party was entitled to judgment as a matter of law. *See Miller v. Wolpoff & Abramson, L.L.P.*,
10 321 F.3d 292, 300 (2d Cir. 2003); *see also Williams v. R.H. Donnelley, Corp.*, 368 F.3d 123, 126
11 (2d Cir. 2004).

12 Plaintiff argues that defendant failed to pay him “introductory commissions” for sales of
13 the property of Nelson Seabra in 2003-2004 and in 1992-1996 allegedly due to him under a
14 commission agreement. In its thorough Memorandum and Order, the district court found, with
15 respect to the 2003-2004 sales, that the clear language of the comission agreement provides that
16 plaintiff was entitled to a commission on “sales from Seabra” and not “sales from the collection
17 of Seabra.” It also found that the 1992-1996 claims were barred by the statute of limitations. We
18 agree.

19 Pursuant to New York law, to establish a claim of breach of contract, a plaintiff must
20 show “(1) a contract; (2) performance of the contract by one party; (3) breach by the other party;
21 and (4) damages.” *Rexnord Holdings, Inc. v. Biderman*, 21 F.3d 522, 525 (2d Cir. 1994)
22 (citation omitted). Where, as here, a contract is unambiguous, it is enforced according to its

1 terms, and the court will generally not look "outside the four corners of the document" to add to
2 or vary it. *See Am. Home Prods. Corp. v. Liberty Mut. Ins. Co.*, 748 F.2d 760, 765 (2d Cir.
3 1984) ("Where. . . the contract's language admits of only one reasonable interpretation, the court
4 need not look to extrinsic evidence of the parties' intent or to rules of construction to ascertain the
5 contract's meaning."). Unambiguous contract terms "are given their plain meaning." *Krumme v.*
6 *WestPoint Stevens, Inc.*, 238 F.3d 133, 139 (2d Cir. 2000) (internal quotation marks and citation
7 omitted).

8 The terms of the commission agreement were set forth in a letter from defendant's CEO,
9 stating that plaintiff was entitled to a commission on "any sales from Mr. Nelson Seabra." The
10 court below appropriately reasoned that the terms of the commission agreement did not entitle
11 plaintiff to a commission on the 2003-2004 sales by Nelson Seabra's cousin and his wife.
12 Plaintiff's 2003-2004 claims are based on an argument that the contract covered "sales (by others
13 of property which belonged to) Seabra." However, as the district court concluded, it is clear that
14 the contract focused on the identity of the consignor rather than on the sales of certain
15 inventoried property that he owned. Since plaintiff's argument is premised on an implausible
16 interpretation of the contract, it cannot defeat summary judgment. *See K. Bell & Assocs. v.*
17 *Lloyd's Underwriters*, 97 F.3d 632, 637 (2d Cir. 1996) (explaining that alternative constructions
18 of a contract must be reasonable).

19 As the district court explained, because the 2003-2004 sales do not fall within the scope
20 of the contract, plaintiff's claims for breach of the duty of good faith and fair dealing as to those
21 sales also fail. *See Fasolino Foods Co. v. Banca Nazionale Del Lavoro*, 961 F.2d 1052, 1056 (2d
22 Cir.1992); *see also Kingdom 5-KR-41, Ltd. v. Star Cruises PLC*, Nos. 01 Civ. 2946(DLC), 01

1 Civ. 7670(DLC), 2004 WL 1926090, at *5 (S.D.N.Y. Aug. 31, 2004). In addition, defendant
2 was correctly awarded summary judgment on the breach of fiduciary duty claim since plaintiff is
3 unable to show that a fiduciary duty existed. *See also In re Mid-Island Hosp., Inc.*, 276 F.3d 123,
4 130 (2d Cir. 2002) (“[W]hen parties deal at arms length in a commercial transaction, no relation
5 of confidence or trust sufficient to find the existence of a fiduciary relationship will arise absent
6 extraordinary circumstances.”) (internal quotation marks and citation omitted).

7 Relatedly, as the district court determined, a plaintiff who is unable to demonstrate a
8 fiduciary relationship, generally cannot establish a constructive trust claim. *See In re First Cent.*
9 *Fin. Corp.*, 377 F.3d 209, 212 (2d Cir. 2004) (detailing the four elements for a constructive trust
10 under New York law: “(1) a confidential or fiduciary relationship; (2) a promise, express or
11 implied; (3) a transfer of the subject *res* made in reliance on that promise; and (4) unjust
12 enrichment.”) (internal quotation marks and citations omitted); *cf. Sec. Pac. Mortg. and Real*
13 *Estate Servs., Inc. v. Rep. of Philippines*, 962 F.2d 204, 210 (2d Cir. 1992) (“[W]here a party is
14 unjustly enriched, a court sitting in equity may impose a constructive trust, even though no
15 confidential or fiduciary relationship exists.”). Furthermore, plaintiff is not entitled to a
16 constructive trust because the rights of the parties here are based on a written agreement. *See In*
17 *re First Cent. Fin. Corp.*, 377 F.3d at 214 n.4 (“Indeed, the existence of a written agreement has
18 already been held by a number of courts in this Circuit to bar a constructive trust.”).

19 Plaintiff’s fraud claims were properly denied since there is no cause of action for fraud
20 where the only fraud charged relates to breach of contract. *See also Lehman v. Dow Jones & Co.,*
21 *Inc.*, 783 F.2d 285, 296 (2d Cir. 1986) (explaining that a plaintiff “must show injury other than
22 that resulting from . . . [the] refusal to pay a finder's fee.”) (internal quotation marks and citation

1 omitted). Also, plaintiff did not allege a necessary element, that he suffered damage as a result of
2 the fraud. *Schlaifer Nance & Co. v. Estate of Warhol*, 119 F.3d 91, 98 (2d Cir. 1997) (detailing
3 damage as one of five elements required for a fraud claim under New York law).

4 Finally, the district court correctly concluded that the statute of limitations barred
5 plaintiff's claims regarding the 1992-1996 sales since plaintiff did not commence the present
6 action until 2004. *See* N.Y. CPLR § 213(2) (stating that an action upon a contractual obligation
7 or liability must be commenced within six years); *see also ABB Indus. Sys., Inc. v. Prime Tech.,*
8 *Inc.*, 120 F.3d 351, 360 (2d Cir. 1997) ("[I]n New York it is well settled that the statute of
9 limitation for breach of contract begins to run from the day the contract was breached, not from
10 the day the breach was discovered, or should have been discovered."); *see also T & N PLC v.*
11 *Fred S. James & Co. of New York*, 29 F.3d 57, 60 (2d Cir. 1994) (stating that "neither knowledge
12 of the breach nor cognizable damages are required to start the statute of limitations running at
13 breach.").

14 We have considered plaintiff's remaining claims and find them without merit. For the
15 foregoing reasons, the judgment of the district court is hereby AFFIRMED.

16
17 FOR THE COURT:

18 Roseann B. MacKechnie, Clerk

19
20 By: _____